

REMARKS

The above Amendments and these Remarks are in reply to the Office Action mailed July 30, 2003. Claims 80-107 are presented herewith.

I. Summary of the Examiner's Objections

Claims 80-107 are rejected under 35 U.S.C. 102(e) as being anticipated by Flanagan et al. (U.S. Patent No. 6,272,545).

II Submissions

Submitted herewith are:

- (1) Petition to add Richard M. Onyon as an inventor;
- (2) Substitute Declaration For Patent Application (correcting the erroneous omission of Richard Onyon as an inventor);
- (3) Consent of Assignee to Correction of Inventorship Pursuant to 37 CFR §1.48 to add Richard Onyon; and
- (4) Declaration of Richard Onyon in Support of Petition to Correct Inventorship, and
- (5) Declaration Of Richard M. Onyon pursuant to 37 C.F.R. §1.131, and Declaration of Leighton Ridgard pursuant to 37 C.F.R. §1.131, each setting forth facts establishing a date of invention prior to the priority date of October 24, 1997.

III. Remarks

Flanagin et al. forms a basis of each of the claim rejections. Flanagin et al. issued on August 7, 2001, after the filing date of the present application, and is therefore only available as a reference under 35 USC §102(e). It is respectfully submitted that the 1.131 Declarations of Messrs. Onyon and Ridgard are proper as showing evidence of conception well prior to the earliest priority date of Flanagin et al., as well as diligence in reducing the invention to practice after conception.

Flanagin et al. was filed October 22, 1998, but claims priority to provisional application Serial No. 60/063,164, filed October 24, 1997, and provisional application Serial No. 60/064,986 filed November 7, 1997.

As noted in the MPEP SECTION 706.02:

A rejection based on 35 U.S.C. 102(e) can be overcome by:

(D) Filing an affidavit or declaration under 37 CFR 1.131 showing prior invention, if the reference is not a U.S. patent (or application in the case of a provisional rejection) claiming the same patentable invention as defined in 37 CFR 1.601(n).

A Section 1.131 affidavit is proper in this instance because Flanagin et al. and the present invention do not claim the same invention.

As set forth in the attached 1.131 Declarations of Messrs. Onyon and Ridgard, the invention recited in the claims of the present invention was conceived of earlier than the earliest possible date of Flanagin et al. as a prior art reference, and the inventors were diligent from the date of conception to the reduction to practice of the invention (as evidenced by prototypes of the invention). In particular, as discussed in the 131 Declarations of Messrs. Onyon and Ridgard, the claimed application object was

conceived of prior to October of 1997. See 131 Declaration of Mr. Onyon, ¶¶ 16-18; 131 Declaration of Mr. Ridgard, ¶¶ 20-22.

It is therefore respectfully requested that Flanagan et al. be removed as a prior art reference and that the rejections of the claims based on Flanagan et al. be withdrawn.

Based on the 1.131 Declarations and these remarks, reconsideration of Claims 80-107 is respectfully requested.

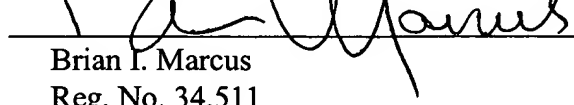
The Examiner's prompt attention to this matter is greatly appreciated. Should further questions remain, the Examiner is invited to contact the undersigned attorney by telephone.

Enclosed is a PETITION FOR EXTENSION OF TIME UNDER 37 C.F.R. § 1.136 for extending the time to respond up to and including today, January 30, 2004.

The Commissioner is authorized to charge any underpayment or credit any overpayment to Deposit Account No. 501826 for any matter in connection with this response, including any fee for extension of time, which may be required.

Respectfully submitted,

Date: January 30, 2004

By: 
Brian I. Marcus
Reg. No. 34,511

VIERRA MAGEN MARCUS HARMON & DENIRO LLP
685 Market Street, Suite 540
San Francisco, CA 94105-4206
Telephone: (415) 369-9660
Facsimile: (415) 369-9665